

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Selvin R. Cunningham,

Petitioner,

Case No. 3:13 CV 372

v.

ORDER

Bennie Kelly,

Respondent.

On February 20, 2013, Selvin R. Cunningham filed a petition for a writ of habeas corpus with this Court pursuant to 28 U.S.C. § 2254. The case was referred to a magistrate judge for a report and recommendation. As the report, has now been filed, the case is ready my review.

A jury convicted Cunningham in 2007 of failing to comply with an order or signal of a police officer in violation of Ohio Rev. Code § 2921.331(B); receiving stolen property in violation of Ohio Rev. Code § 2913.51; possessing criminal tools in violation of Ohio Rev. Code § 2923.24; burglary in violation of Ohio Rev. Code § 2911.12(A)(3); and breaking and entering in violation of Ohio Rev. Code § 2911.13(B). He was subsequently sentenced to an aggregated term of twelve and one-half years of imprisonment.

Cunningham then proceeded to seek various forms of post-conviction relief in the state courts of Ohio. His efforts did result in the trial court vacating the receiving stolen property conviction and reducing his sentence by eighteen months.

Cunningham then filed his petition for a writ of habeas corpus under § 2254 raising three grounds for relief. (Doc. No. 1). The case was referred to Magistrate Judge Greg White who recommended dismissing the petition on April 24, 2014. Despite being warned by Magistrate Judge

White of the consequences for failing to object to the report (Doc. No. 14, p. 21), Cunningham failed to file any objections.

Accordingly, I adopt Magistrate Judge White's report and dismiss Cunningham's petition for a writ of habeas corpus.

CERTIFICATE OF APPEALABILITY

A habeas corpus petitioner is not entitled to a certificate of appealability as a matter of right, but must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The petitioner need not demonstrate he should prevail on the merits. Rather, a petitioner must demonstrate "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003); *see also Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000). Because Cunningham failed to file objections to the magistrate judge's report, the issues he raised in his habeas corpus petition are deemed to be waived. *See Thomas v. Arn*, 474 U.S. 140, 144–45 (1985); *Smith v. Detroit Fed'n of Teachers*, 829 F.2d 1370, 1373–74 (6th Cir. 1987) (holding the failure to object to a magistrate's report and recommendation constitutes "[acquiescence] in that recommendation and waive[s] subsequent review of the matter"). This waiver establishes Cunningham's failure to meet the *Miller-El* standard. For this reason, I certify there is no basis on which to issue a certificate of appealability. 28 U.S.C. § 2253; Fed. R. App. P. 22(b).

So Ordered.

s/ Jeffrey J. Helmick
United States District Judge